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LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE
BUREAU OF FRAUD AND CORRUPTION PROSECUTIONS
JUSTICE SYSTEM INTEGRITY DIVISION

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March 25, 2015

Captain Rod Kusch
Homicide Bureau
Los Angeles Sheriff's Department
5747 Rickenbacker Road
Commerce, California 90040

RE: J.S.I.D. File #14-0600
L.A.S.D. DR #014-12347-2814-032

Dear Captain Kusch:

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the September 17, 2014, non-fatal shooting of Johnathan De La Torre by Los Angeles County Sheriff's Department (LASD) Detective Deanna Ballesteros. We have concluded that Detective Ballesteros acted lawfully in self-defense and defense of others.

The District Attorney's Command Center was notified of the shooting at 12:27 a.m., on September 18, 2014. The District Attorney Response Team, comprised of Deputy District Attorney Kimberly Toney and District Attorney Senior Investigator [redacted] responded to the location. They were given a briefing regarding the circumstances surrounding the shooting and a walk-through of the scene.

The following analysis is based on investigative reports, forensic science firearms analysis reports, photographic evidence and witness statements prepared by LASD submitted to this office by LASD Detective Dave Gunner. The voluntary statements of Detective Ballesteros were considered in this analysis.

FACTUAL ANALYSIS

On September 17, 2014, at approximately 10:45 p.m., [redacted] was working at the Compton Business Center in the City of Compton.[1] [redacted] was at his desk in the rear of the business when Johnathan De La Torre and Alfredo Morales entered the location armed with handguns, dressed in all black clothing and wearing ski masks. De La Torre pointed his handgun at the customers and yelled for everyone to get on the ground. De La Torre demanded that [redacted] give him money and [redacted] complied by placing approximately $600 from the cash register into a black plastic bag that

[1] The Compton Business Center, located in a strip mall at 700 W. Compton Boulevard, Suite A, is a gambling establishment where patrons pay cash to gamble on the store's computers.

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De La Torre was carrying. De La Torre smashed several computer monitors with a hammer and demanded the surveillance system recording device. [redacted] gave De La Torre the recording device and De La Torre grabbed [redacted] cell phone and tablet. De La Torre also demanded [redacted] car keys and ordered [redacted] to his car when he was unable to find the keys inside the business. As [redacted] walked towards the front door, De La Torre struck him with the hammer in the back of his right thigh causing him to fall to the ground. De La Torre and Morales ran out the front door and across Compton Boulevard towards Paulsen Avenue.

At approximately 10:48 p.m., Detectives Deanna Ballesteros and Edgar Solano were driving eastbound on Compton Boulevard when they observed De La Torre and Morales dressed in all black clothing and wearing ski masks. De La Torre and Morales ran in a northeast direction across Compton Boulevard and turned northbound on Paulsen Avenue.[2] Believing they may have committed a robbery, Solano drove the patrol car northbound on Paulsen as De La Torre and Morales ran eastbound into the alley north of Compton Boulevard.

As Solano began to turn the patrol car into the alley, De La Torre suddenly turned towards the deputies as he struggled to remove a handgun from a holster attached to his hip. De La Torre removed the handgun and pointed it at Ballesteros and Solano. Solano stopped the car at the mouth of the alley. Solano yelled, "Gun, gun, gun!" and ran to the rear of the patrol car for cover. Ballesteros stood behind the passenger side door and also yelled, "Gun, gun!" Ballesteros fired four rounds at De La Torre who fell to the ground.[3] Morales ran southbound towards Compton Boulevard out of view and was not immediately apprehended.[4]

Ballesteros and Solano detained De La Torre until Deputies Carlos De La Rosa and Anthony Federico arrived. A nine millimeter semi-automatic handgun, with one round in the chamber and nine rounds in the magazine, was found approximately three feet from De La Torre. De La Torre had a handgun holster on the right side of his waist and a magazine pouch containing ten nine millimeter rounds on his left waist area. A black plastic grocery bag containing $425, a gold watch, digital video recorder, hammer and [redacted] tablet were found in the alley near De La Torre.[5]

Paramedics transported De La Torre to St. Francis Medical Center where he was treated by Dr. Jones for a gunshot wound to his abdomen.

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[2] Ballesteros and Solano were assigned to the Operation Safe Streets unit and were in a marked black and white patrol car that did not have a light bar.

[3] A post-incident examination revealed that Ballesteros' departmentally issued Smith and Wesson nine millimeter firearm was loaded with one round in the chamber and thirteen rounds in the magazine. Ballesteros' firearm was normally loaded with one round in the chamber and seventeen rounds in the magazine; this is consistent with Ballesteros having fired four rounds during the officer-involved shooting.
Witness [redacted] said she was smoking narcotics with her [redacted] behind a building facing the alley when she saw two males run northbound on Paulsen. She heard a female voice yell, "Drop, stop and halt!" and "Put the gun down!" [redacted] then heard two gunshots.

[4] A further investigation revealed that Morales committed the robbery with De La Torre. De La Torre and Morales were charged in Los Angeles Superior Court case TA135190 with violations of Penal Code sections 211, 245(a)(1), 594(a), 245(d)(2), 12022.5(a) and 12022.5(d).

[5] Four hundred and eighty one dollars and [redacted] cell phone were later recovered from De La Torre at St. Francis Medical Center.

Statement of Detective Deanna Ballesteros

On September 17, 2014, Ballesteros was the passenger in a car driven by her partner, Detective Edgar Solano. Ballesteros and Solano were driving eastbound on Compton Boulevard towards the sheriff station when Solano said, "Hey, did you see that?" Ballesteros saw De La Torre and Morales, dressed in black, running in a northeast direction across Compton Boulevard. Solano accelerated the vehicle as De La Torre and Morales turned onto Paulsen Avenue. Ballesteros momentarily lost sight of them. Solano drove northbound on Paulsen, which was better illuminated. Ballesteros saw that De La Torre and Morales were both dressed entirely in black clothing and wore ski masks.

De La Torre and Morales turned into an alley that ran in an east to west direction, located north of Compton Boulevard. Morales ran slightly ahead of De La Torre. De La Torre turned towards Ballesteros and she saw the silver barrel of a handgun pointed at her. Ballesteros and Solano both yelled, "Gun, gun!" From her peripheral vision, Ballesteros saw Solano exit the vehicle and drop down out of her view. Ballesteros saw a muzzle flash from De La Torre's weapon. Ballesteros believed that De La Torre had fired a round at Solano and that he had been struck.[6] Standing between the opened passenger side door and the side of the vehicle, and in fear that De La Torre was going to shoot her, Ballesteros fired four to six rounds at De La Torre. De La Torre fell to the ground as Morales continued running southbound towards Compton Boulevard.

Ballesteros told De La Torre to put his hands up so that she could see them. Ballesteros asked Solano if he had been hit and saw that De La Torre continued to move around. Ballesteros ordered De La Torre to stop moving and to keep his arms up. Solano said, "The suspect is down." Ballesteros felt a tingling sensation in her body and was unsure if she had been struck by a round. She asked Solano if she had been hit. De La Torre said, "I'm bleeding out, I'm sorry, I'm sorry," and Ballesteros told him not to move. The responding deputies advised her that she had not been struck.

Statement of Detective Edgar Solano

On September 17, 2014, Solano drove himself and his partner, Detective Deanna Ballesteros, eastbound on Compton Boulevard in a marked black and white patrol car with no light bar. As he drove through the intersection at Wilmington Avenue, Solano saw De La Torre and Morales, who both wore all black clothing, run northbound across Compton Boulevard in a northeast direction. Solano asked Ballesteros if he saw them running across the street and accelerated the vehicle. De La Torre and Morales ran northbound on Paulsen Avenue, and Solano followed them in the patrol car. De La Torre and Morales continued to run and did not look back at the patrol car. Solano momentarily lost sight of De La Torre and Morales as he drove northbound onto Paulsen Avenue. When he regained sight of them, Solano saw that De La Torre and Morales both wore ski masks. De La Torre and Morales ran eastbound into the alley north of Compton Boulevard, and Solano began to drive into the alley. De La Torre suddenly turned towards Solano and began to remove a handgun from his waistband area. De La Torre struggled to remove the handgun from a holster

[6] The investigation revealed that De La Torre did not fire a round from his handgun.

attached to his hip. De La Torre removed the handgun from the holster and pointed it at Solano and Ballesteros.

Solano stopped the patrol car at the entrance of the alley and yelled, "Gun, gun, gun!" Solano exited the vehicle because he did not want to be shot while inside the car. He crouched down and ran to the rear of the patrol car for cover. As he ran to the rear of the car, Solano heard four gunshots and believed De La Torre was shooting at him. When Solano reached the trunk of the car, he saw Ballesteros standing in front of him and De La Torre laying on the ground. Solano also saw Morales running in a southeast direction towards Compton Boulevard.

Ballesteros asked Solano if he had been shot and Solano began to radio his observations to other deputies. De La Torre's hands were moving and Ballesteros and Solano commanded him to show his hands. Solano approached De La Torre, and he denied having any additional handguns on his person.

Statement of Johnathan De La Torre

De La Torre gave a Mirandized statement to LASD detectives on September 18, 2014. De La Torre admitted he and Morales committed a robbery at the Compton Business Center while armed with handguns.[7] Following the robbery, he and Morales ran across the street and into an alley. When he realized the deputies were behind him, De La Torre turned and pulled the gun out of the holster. De La Torre did not point the gun at the deputies and only intended to put the gun on the ground. The deputy yelled, "Stop!" and fired a round at him while the gun was still in his hand.

LEGAL ANALYSIS

California law permits the use of deadly force in self-defense or in the defense of others if it reasonably appears to the person claiming the right of self-defense or the defense of others that he actually and reasonably believed that he or others were in imminent danger of great bodily injury or death. Penal Code § 197; *People v. Randle* (2005) 35 Cal.4th 987, 994 (overruled on another ground in *People v. Chun* (2009) 45 Cal.4th 1172, 1201); *People v. Humphrey* (1996) 13 Cal.4th 1073, 1082; *see also,* CALCRIM No. 505.

In protecting himself or another, a person may use all the force which he believes reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to prevent the injury which appears to be imminent. CALCRIM No. 3470. If the person's beliefs were reasonable, the danger does not need to have actually existed. *Id.*

"Where the peril is swift and imminent and the necessity for action immediate, the law does not weigh in too nice scales the conduct of the assailed and say he shall not be justified in killing

[7] During De La Torre's statement to detectives, he initially said he committed the robbery with a person named, "Clowney." In a subsequent interview, De La Torre admitted he committed the robbery with his cousin, Alfredo Morales.

because he might have resorted to other means to secure his safety." *People v. Collins* (1961) 189 Cal.App.2d 575, 589.

"The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than the 20/20 vision of hindsight....The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation." *Graham v. Conner* (1989) 490 U.S. 386, 396-397.

CONCLUSION

The evidence examined in this investigation shows that Johnathan De La Torre and Alfredo Morales committed an armed robbery at the Compton Business Center. Detectives Edgar Solano and Deanna Ballesteros, driving in a marked patrol car, saw De La Torre and Morales flee the scene of the robbery as they ran across Compton Boulevard. Solano and Ballesteros followed De La Torre and Morales, who eventually ran into an alley north of Compton Boulevard.

As Solano began to turn the car into the alley, De La Torre suddenly turned towards Solano and Ballesteros, removed a handgun and pointed it at Ballesteros and Solano. Solano stopped the patrol car and yelled, "Gun, gun, gun!" Ballesteros, who stood behind the passenger side door, also yelled, "Gun, gun!" Solano exited the patrol car, ducked down and ran to the rear of the car to avoid being shot and killed. Ballesteros believed that she had seen a muzzle flash from De La Torre's handgun and that Solano had been struck by gunfire. In reasonable fear of death or great bodily injury to her life and Solano's life, Ballesteros fired at De La Torre.

CONTENTS NOTED R.A. KUSCH, Capt. 5-8-15

Given the rapidly evolving, life threatening situation that confronted Detective Ballesteros, we conclude that she acted lawfully in self-defense and defense of others. We are therefore closing our file and will take no further action in this matter.

Very truly yours,

JACKIE LACEY
District Attorney

By

KIMBERLY TONEY
Deputy District Attorney
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CONTENTS NOTED R.A. KUSCH, CAPT. 5-8-15

c: Detective Deanna Ballesteros, #[redacted]